

## SESSION IV

### OVERVIEW OF DETECTION NOTE TAKING AND TESTIMONY

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### OVERVIEW OF DETECTION, NOTE TAKING AND TESTIMONY

Upon successfully completing this session, the participant will be able to:

- o Describe the three phases of detection.
- o Describe the tasks and key decision of each phase.
- o Discuss the uses of a standard note taking guide.
- o Discuss guidelines for effective testimony.

#### CONTENT SEGMENTS

- A. Three Phases of Detection
- B. DWI Investigation Field Notes
- C. Courtroom Testimony

#### LEARNING ACTIVITIES

- o Instructor-Led Presentations
- o Reading Assignments

## DWI DETECTION

Detection is both the most difficult task in the DWI enforcement effort, and the most important. If officers fail to detect DWI violators, the DWI countermeasures program ultimately will fail. If officers do not detect and arrest DWI violators, the prosecutors can not prosecute them, the courts and driver licensing officials can not impose sanctions on them, and treatment and rehabilitation programs will go unused.

The term DWI detection has been used in many different ways. Consequently it does not mean the same thing to all police officers. For the purposes of this training, DWI detection is defined as:

THE ENTIRE PROCESS OF IDENTIFYING AND GATHERING EVIDENCE  
TO DETERMINE WHETHER OR NOT A SUSPECT SHOULD BE ARRESTED  
FOR A DWI VIOLATION.

The detection process begins when the police officer first suspects that a DWI violation may be occurring and ends when the officer decides that there is or there is not sufficient probable cause to arrest the suspect for DWI.

Your attention may be called to a particular vehicle or individual for a variety of reasons. The precipitating event may be a loud noise; an obvious equipment or moving violation; behavior that is unusual, but not necessarily illegal; or almost anything else. Initial detection may carry with it an immediate, suspicion that the driver is impaired; or only a slight suspicion; or even no suspicion at all at that time. In any case, it sets in motion a process wherein you focus on a particular individual and have the opportunity to observe that individual and to accumulate additional evidence.

The detection process ends when you decide either to arrest or not to arrest the individual for DWI. That decision, ideally, is based on all of the evidence that has come to light since your attention first was drawn to the suspect. Effective DWI enforcers do not leap to the arrest/no arrest decision. Rather, they proceed carefully through a series of intermediate steps, each of which helps to identify the collective evidence.

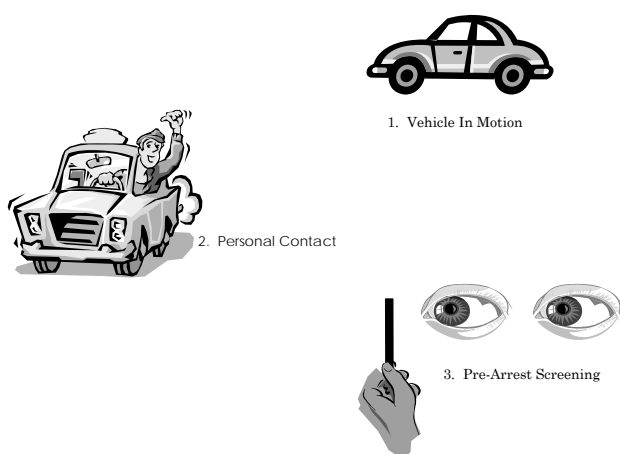
## DETECTION PHASES

The typical DWI contact involves three separate and distinct phases:

- Phase One: Vehicle in motion
- Phase Two: Personal contact
- Phase Three: Pre-arrest screening

(See Exhibit 4-1.)

### EXHIBIT 4-1 DWI DETECTION PHASES



In Phase One, you usually observe the driver operating the vehicle. In Phase Two, after you have stopped the vehicle, there usually is an opportunity to observe and speak with the driver face-to-face. In Phase Three, you usually have an opportunity to administer some formal structured field sobriety tests to the driver to evaluate the degree of impairment. You may administer a preliminary breath test in addition to field sobriety tests to verify that alcohol is the cause of the impairment.

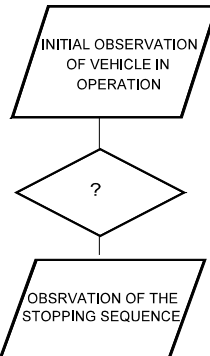
The DWI detection process does not always include all three phases. Sometimes there are DWI detection contacts in which Phase One is absent; that is, cases in which you have no opportunity to observe the vehicle in motion. This may occur at the scene of a crash to which you have been called, at a roadblock, or when you have responded to a request for motorist assistance. Sometimes there are DWI contacts in which Phase Three never occurs. There are cases in which you would not administer formal tests to the driver. These may occur when the driver is impaired or badly injured, or refuses to submit to tests.

## MAJOR TASKS AND DECISIONS

Each detection phase usually involves two major tasks and one major decision (See Exhibit 4-2.)

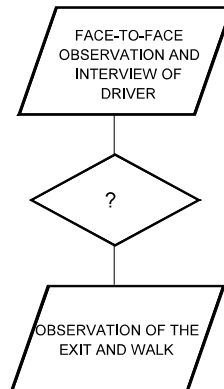
### EXHIBIT 4-2 DWI DETECTION PHASES

#### PHASE ONE: Vehicle In Motion



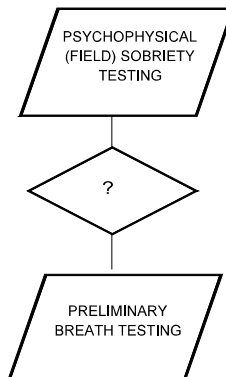
SHOULD I  
STOP THE VEHICLE?

#### PHASE TWO: Personal Contact



SHOULD THE  
DRIVER EXIT?

#### PHASE THREE: Prearrest Screening



IS THERE PROBABLE  
CAUSE TO ARREST  
THE SUSPECT FOR DWI?

In Phase One: Your first task is to observe the vehicle in operation. Based on this observation, you must decide whether there is sufficient cause to command the driver to stop. Your second task is to observe the stopping sequence.

In Phase Two: Your first task is to observe and interview the driver face-to-face. Based on this observation, you must decide whether there is sufficient cause to instruct the driver to step from the vehicle for further investigation. Your second task is to observe the driver's exit and walk from the vehicle.

In Phase Three: Your first task is to administer structured, formal psychophysical tests. Based on these tests, you must decide whether there is sufficient probable cause to arrest the driver for DWI. Your second task is then to arrange for (or administer) a Preliminary Breath Test.

Each of the major decisions can have any one of three different outcomes:

1. Yes - Do it Now
2. Wait - Look for Additional Evidence
3. No - Don't Do It

Consider the following examples.

1. Yes - Do It Now

Phase One: Yes, there are reasonable grounds to stop the vehicle.

Phase Two: Yes, there is enough reason to suspect impairment to justify getting the driver out of the vehicle for further investigation.

Phase Three: Yes, there is probable cause to arrest the driver for DWI right now.

2. Wait - Look for Additional Evidence

Phase One: Don't stop the vehicle yet; keep following and observing it a bit longer.

Phase Two: Don't get the driver out of the car yet; keep talking to and observing the driver a bit longer. (This option may be limited if the officer's personal safety is at risk.)

Phase Three: Don't arrest the driver yet; administer another field sobriety test before deciding.

3. Don't Do It:

Phase One: No, there are no grounds for stopping that vehicle.

Phase Two: No, there isn't enough evidence of DWI to justify administering field sobriety tests.

Phase Three: No, there is not sufficient probable cause to believe this driver has committed DWI.

## OFFICER RESPONSIBILITY

In each phase of detection, you must determine whether there is sufficient evidence to establish "reasonable suspicion" necessary to proceed to the next step in the detection process. It is always your duty to carry out whatever tasks are appropriate, to make sure that all relevant evidence of DWI is brought to light. (See Exhibit 4-3).

### EXHIBIT 4-3 DWI DETECTION

Answers to questions like these can aid you in DWI detection.

Phase One:

- o What is the vehicle doing?
- o Do I have grounds to stop the vehicle?
- o How does the driver respond to my signal to stop?
- o How does the driver handle the vehicle during the stopping sequence?

Phase Two:

- o When I approach the vehicle, what do I see?
- o When I talk with the driver, what do I hear, see and smell?
- o How does the driver respond to my questions?
- o Should I instruct the driver to exit the vehicle?
- o How does the driver exit?
- o When the driver walks toward the side of the road, what do I see?

Phase Three:

- o Should I administer field sobriety tests to the driver?
- o How does the driver perform those tests?
- o What exactly did the driver do wrong when performing the tests?
- o Do I have probable cause to arrest for DWI?
- o Should I administer a preliminary breath test?
- o What are the results of the preliminary breath test?

The most successful DWI detectors are those officers who:

- o know what to look and listen for;
- o have the skills to ask the right kinds of questions;
- o choose and use the right kinds of tests;
- o make the correct observations; and
- o are motivated and apply their knowledge and skill whenever they contact someone who may be under the influence.

Officers like these are likely to make more arrests and to document the clear, convincing evidence needed to secure convictions.

## NOTE TAKING AND TESTIMONY

### INTRODUCTION

A basic skill needed for DWI enforcement is the ability to graphically describe your observations. Just as detection is the process of collecting evidence, description largely is the process of conveying evidence. Successful description demands the ability to convey evidence clearly and convincingly. Your challenge is to communicate evidence to people who weren't there to see, hear and smell the evidence themselves. Your tools are the words that make up your written report and verbal testimony. You must communicate with the supervisor, the prosecutor, the judge, the jury and even with the defense attorney. You are trying to "paint a word picture" for those people, to develop a sharp mental image that allows them to "see" what you saw; "hear" what you heard; and "smell" what you smelled.

Officers with the knowledge, skills and motivation to select the most appropriate words for both written reports and courtroom testimony will communicate clearly and convincingly, making them more successful in DWI prosecution. (See Exhibit 4-4.)



**EXHIBIT 4-4**  
**USING CLEAR AND CONVINCING LANGUAGE**

Field notes are only as good as the information they contain. Reports must be clearly written and events accurately described if the reports are to have evidentiary value. One persistent problem with DWI incident reports is the use of vague language to describe conditions, events and statements. When vague language is used, reports provide a confused picture of what happened. When clear language is used, reports provide an accurate picture of what happened. Clear and convincing field notes provide strong evidence in court.

Consider the following examples.

<u>Vague Language</u>	<u>Clear Language</u>
o Made an illegal left turn on Jefferson	o From Main, turned left (north-bound) on Jefferson, which is one way southbound.
o Drove erratically	o Weaving from side to side. Crossed center line twice and drove on shoulder three times.
o Driver appeared drunk	o Driver's eyes bloodshot; gaze fixed; hands shaking. Strong odor of alcoholic beverage on driver's breath.
o Vehicle stopped in unusual fashion	o Vehicle struck, climbed curb; stopped on sidewalk.
o Vehicle crossed the center line	o Vehicle drifted completely into the opposing traffic lane.

**DWI INVESTIGATION FIELD NOTES**

One of the most critical tasks in the DWI enforcement process is the recognition and retention of facts and clues that establish reasonable suspicion to stop, investigate and subsequently arrest persons suspected of driving or operating a vehicle while impaired. The evidence gathered during the detection process must establish the elements of the violation, and must be documented to support successful prosecution of the violator. This evidence is largely sensory (sight, smell, hearing) in nature, and therefore is extremely short-lived.

You must be able to recognize and act on the facts and circumstances with which you are confronted. But you also must be able to recall those observations, and describe them clearly and convincingly to secure a conviction. You may be inundated with evidence of DWI, i.e., sights, sounds, smells. You recognize this evidence, sometimes subconsciously, and on this evidence based your decisions to stop, to investigate and ultimately to arrest.

Since evidence of a DWI violation is short-lived, you need a system and tools for recording field notes at scenes of DWI investigations.

One way to improve the effectiveness of your handwritten field notes is to use a structured note taking guide. The guide makes it easy to record brief "notes" on each step on the detection process and ensures that vital evidence is documented.

The field notes provide the information necessary for completion of required DWI report forms and assist you in preparing a written account of the incident. The field notes will also be useful if you are required to provide oral testimony, since they can be used to refresh your memory.

A model note taking guide is provided for your use. A brief description follows. Details are provided in subsequent units.

## NOTE TAKING GUIDE

Remember that you must document those actions which gave you reasonable suspicion or probable cause to justify further investigation of a suspected DWI incident.

Section I provides space to record basic information describing the suspect, the vehicle, the location, and the date and time the incident occurred.

Section II provides space to record brief descriptions of the vehicle in motion (Detection Phase One), including initial observation of the vehicle in operation, and observation of the stopping sequence.

Section III provides space to record brief descriptions of the personal contact with the suspect (Detection Phase Two), including observations of the driver. General Observations provides space to record the suspect's manner of speech, attitude, clothing, etc. Any physical evidence collected should also be noted in this section.

Section IV provides space to record the results of all field sobriety tests that were administered, and the results of the preliminary breath test (PBT) if such a test was given.

Since this is a note taking guide and space is limited, you will have to develop your own "shorthand" system. Your notes should be as descriptive as possible and should create "mental pictures" of the facts, circumstances or events being described. You will use these notes to refresh your memory, to write the arrest report and to testify in court.

NOTE: Field Notes may be subpoenaed as evidence in court. It is important that any "shorthand" system you use be describable, usable, complete and consistent.

## COURTROOM TESTIMONY

Testimonial evidence in DWI cases establishes that the accused was in fact the driver and was impaired. It is only as good as it is clear and concise.

Requirements: Preparation at the scene and prior to trial.

# DWI INVESTIGATION FIELD NOTES

I. NAME \_\_\_\_\_ SEX \_\_\_\_\_ RACE \_\_\_\_\_  
ADDRESS \_\_\_\_\_ CITY/STATE \_\_\_\_\_ OP.LIC.NO. \_\_\_\_\_  
D.O.B. \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ SOC. SEC. # \_\_\_\_\_  
VEHICLE MAKE \_\_\_\_\_ YEAR \_\_\_\_\_ LIC. \_\_\_\_\_ STATE \_\_\_\_\_  
DISPOSITION \_\_\_\_\_ NO. PASSENGERS \_\_\_\_\_  
INCIDENT LOCATION \_\_\_\_\_  
DATE \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ TIME \_\_\_\_\_ CRASH YES ☐ NO ☐

## II. VEHICLE IN MOTION

INITIAL OBSERVATIONS \_\_\_\_\_  
OBSERVATION OF STOP \_\_\_\_\_

## III. PERSONAL CONTACT

OBSERVATION OF DRIVER \_\_\_\_\_  
STATEMENTS \_\_\_\_\_  
PRE-EXIT SOBRIETY TESTS \_\_\_\_\_  
OBSERVATION OF THE EXIT \_\_\_\_\_  
ODORS \_\_\_\_\_

### GENERAL OBSERVATIONS

SPEECH \_\_\_\_\_  
ATTITUDE \_\_\_\_\_  
CLOTHING \_\_\_\_\_  
PHYSICAL DEFECTS/DRUGS OR MEDICATIONS USED \_\_\_\_\_

## IV. PRE-ARREST SCREENING

### HORIZONTAL GAZE NYSTAGMUS

Equal Pupils ☐ Yes ☐ No ☒ LACK OF SMOOTH PURSUIT  
Equal Tracking ☐ Yes ☐ No ☒ DISTINCT AND SUSTAINED NYSTAGMUS AT MAXIMUM DEVIATION  
Vertical Nystagmus ☐ Yes ☐ No ☒ ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES  
Other (i.e., Resting Nystagmus) \_\_\_\_\_

LEFT	RIGHT

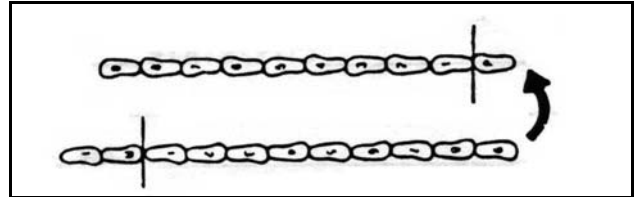
## WALK AND TURN

### INSTRUCTIONS STAGE

CANNOT KEEP BALANCE ☐

STARTS TOO SOON ☐

### WALKING STAGE



#### FIRST NINE STEPS

STOPS WALKING

MISSES HEEL -TO- TOE

STEPS OFF LINE

RAISES ARMS

ACTUAL STEPS TAKEN

#### SECOND NINE STEPS

IMPROPER TURN (Describe) \_\_\_\_\_

CANNOT DO TEST (EXPLAIN) \_\_\_\_\_

OTHER: \_\_\_\_\_

## ONE LEG STAND

L

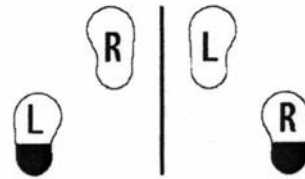
R

Sways while balancing.

Uses arms to balance.

Hopping.

Puts foot down.



Type of Footwear

OTHER: \_\_\_\_\_

## OTHER FIELD SOBRIETY TESTS

NAME OF TEST \_\_\_\_\_

DESCRIBE PERFORMANCE \_\_\_\_\_

NAME OF TEST \_\_\_\_\_

DESCRIBE PERFORMANCE \_\_\_\_\_

NAME OF TEST \_\_\_\_\_

DESCRIBE PERFORMANCE \_\_\_\_\_

PBT (1) (optional) Time:\_\_\_\_\_ Results:\_\_\_\_\_

PBT (2) (optional) Time:\_\_\_\_\_ Results:\_\_\_\_\_

## COURTROOM TESTIMONY

Although only a minority of DWI cases actually come to trial, the arresting officer must be fully prepared to testify in court on any case. Testimonial evidence in DWI cases usually is the only way to establish that the accused was in fact the driver of the vehicle alleged to have been involved in the DWI incident. Testimonial evidence also may be the primary and sometimes the only means of establishing that the accused was impaired. Even when scientific evidence is available, supportive testimonial evidence will be required to permit introduction of that scientific evidence in court.

### PREPARATION

Testimonial evidence must be clear and convincing to be effective. The first requirement for effective testimony is preparation. Testimony preparation begins at the time of the DWI incident. From the very beginning of the DWI contact, it is your responsibility to:

- o recognize significant evidence;
- o compile complete, accurate Field Notes;
- o prepare a complete and accurate incident report.

Testimony preparation continues prior to trial. Just before the trial, you should:

- o review Field Notes;
- o review case jacket/file;
- o mentally organize elements of offense, and the evidence available to prove each element;
- o mentally organize testimony to convey observations clearly and convincingly; and
- o discuss the case with the prosecutor.

### IN COURT

In court, your testimony should be organized chronologically and should cover each phase of the DWI incident:

- o initial observation of vehicle, the driver or both;

- o reinforcing cues, maneuvers or actions, observed after signaling driver to stop, but before driver's vehicle came to a complete stop;
- o statements and other evidence obtained during your initial face-to-face contact with driver;
- o pre-arrest screening sobriety tests administered to the driver;
- o the arrest itself; including procedures used to inform suspect of arrest, admonish suspect of rights, and so on;
- o suspect's actions and statements subsequent to the arrest;
- o observation and interview of suspect subsequent to the arrest;
- o the request for the chemical test; including the procedures used, admonition of rights and requirements, and so on;
- o the conduct and results of the chemical test, if you were also the testing officer.
- the interview of the suspect

## TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following sentences.

1. DWI detection is defined as \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. The three phases in a typical DWI contact are:  
  
Phase One      \_\_\_\_\_  
  
Phase Two      \_\_\_\_\_  
  
Phase Three    \_\_\_\_\_
3. In Phase One, the officer usually has an opportunity to \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Phase Three may not occur if \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. In Phase Two, the officer must decide \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Each major decision can have any one of \_\_\_\_\_ different outcomes.  
  
These are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



7. At each phase of detection, the officer must determine \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Evidence of DWI is largely \_\_\_\_\_ in nature.
9. Police officers need a system and tools for recording field notes at scenes of DWI investigations because DWI evidence is \_\_\_\_\_.
10. Testimony preparations begins \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. List two things the officer should do to prepare testimony just before the trial.
- a. \_\_\_\_\_
- b. \_\_\_\_\_
12. In court, the officer's testimony should be organized \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. The conditions and results of the Chemical test are included in the arresting officer's testimony if \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_